CF0000059006

XII-88/(Jail)
J.P.R.—5,000-9-81

Cr A 554 /92

Division Bench (Criminal)

APPEAL OF PRISONER

No. 65 Name Mohar Sai

Father's name Beedhee Oraon

Residence Charkhapara Age 50 yrs.

Sentenced to Life imprisonment on 6.4.92

Under section 302, I.P.C. by A.D.J.(I) Raigarh

S.T. No. 151/91

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 9

2 Date of which copy received 6.4.92

3 Date on which Appeal sent 10.4.92

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 65 Name Mohar Sai

Continued in Raigarh Jail

No. 44 dated 10.4.92 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Raigarh

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court. at Jabalpur M.P. High Court

Superintendent Central Prison / Sub-Jail
District Jail, Raigarh 21/4/92

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. 2 CJM Raigarh Dated 21.4.92 198

Forwarded to the Sessions Judge Raigarh (MP)

Recd 29/4/92

C.J.Magistrate

21.4.92

Date of receipt in Appliate Court

(P.T.O.)

(13)

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 584 OF 1992

Mohar Sai

Vs.

State of Chhattisgarh

J U D G M E N T

(Dated 26th July, 2005)

(14)

A.F.R

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO. 584 OF 1992

Mohar Sai

Vs.

State of Chhattisgarh

CORAM : HON'BLE SHRI FAKHRUDDIN, J &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J

Shri Shashank Shrivastava, counsel for the appellant.

Shri J.D. Bajpai, Govt. Advocate/Addl. Public Prosecutor and Shri Sachin Singh Rajput, Panel Lawyer for the State.

Per Dilip Raosaheb Deshmukh, J

J U D G M E N T

(Dated 26th July, 2005)

Heard.

2. This appeal is directed against the judgment delivered in Sessions Case No.151/1991 by Shri M.P. Sahlam, Second Additional Sessions Judge, Raigarh, on 6-4-1992 whereby the appellant was convicted under Section 302 of the Indian Penal Code for committing murder of his wife Amso Bai on 18-7-1991 in village Bankaruma, Charkhapara, Police Station Pathalgaon and was sentenced to undergo imprisonment for life and a fine of Rs.200/-, in default of payment of fine to further undergo rigorous imprisonment for two months.

3. Admittedly deceased Amso Bai was the wife and Aganesu P.W.2 is the son of the accused/appellant.

4. Briefly stated the prosecution story is that in the morning of 19-7-1991 the appellant informed his son Aganesu, P.W.2 that he had killed Amso Bai inside the house by lathi. On this information, Aganesu, P.W.2 went with the appellant to his house and saw the dead body of Amso Bai lying in a room with blood oozing out from her head and also spread on the floor. On seeing this Aganesu, P.W.2 called Mansingh, P.W.3, Kartiko, P.W.4 and Kumar Das, P.W.1 to the house of the accused/appellant. These witnesses also came and saw the dead body of Amso Bai. On being asked by Kumar Das, P.W.1, Aganesu, P.W.2 and Mansingh, P.W.3, the appellant told them that Amso Bai was a habitual drunkard and would not give liquor for his consumption, therefore, he had killed Amso Bai.

5. First Information Report was lodged by Kumar Das, P.W.1, in Police Station Pathalgaon, vide Ex.P/1. Investigating Officer Shri Mukesh Khare, Sub Inspector, reached the spot and made the inquest vide Ex.P/11(a) on the body of the deceased. The dead body was sent for post mortem in the evening of 19-7-1991. Post mortem was conducted by Dr. G.K. Verma, P.W.13, on 20-7-1991 who found the following external injuries :

i) Lacerated wound over skull 4" above the forehead size 4" x ½" x bone deep.

ii) Anterior to post fontanelle lacerated wound size 4" x ½" x bone deep.

iii) Just lateral to injury No.2 lacerated wound transversely placed size 5" x ½" with fracture of temporal bone left side.

On dissection huge hemotoma was present on the Dura Mater.

iv) Lacerated wound, skull about 5" above the right ear, transversely placed size 2" x ½" x bone deep.

v) Lacerated wound upper part of right ear 3" x ½" x cutted through.

vi) Lacerated wound right cheek below maxilla 2" x ½" x ¼ ".

vii) Black eye of right eye with contusion on right cheek 4" x ½".

viii) Contusion over an area of 6" over the right chest with fracture of 5th, 6th, 7th and 8th rib over the mid clavicular line with huge blood present over the right thoracic cavity.

ix) Contusion over the left chest over an area of 4".

x) Contusion over left thigh on the upper part, vertically placed size 6" x 1" red in colour.

6. In the opinion of Dr. Verma cause of death was shock and haemorrhage due to injuries sustained by the deceased on chest and head. The Doctor opined that death was homicidal in nature. The weapon of assault i.e. one lathi was handed over by the appellant to Kumar Das, P.W.1 after making extra judicial confession was seized from Kumar Das vide Ex.P/2. After completion of investigation the accused was prosecuted for committing murder of Amso Bai under Section 302 of the Indian Penal Code.

7. The accused/appellant abjured the guilt and claimed trial. The prosecution examined as many as 13 witnesses. Learned trial

Judge relying upon the evidence of extra judicial confession made by the appellant before P.W.1 Kumar Das, P.W.2 Aganesu and P.W.3 Mansingh as also the post mortem report given by Dr. G.K. Verma, P.W.13, came to the conclusion that homicidal death of Amso Bai was caused intentionally by the appellant and convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

8. Shri Shrivastava, learned counsel for the appellant, has mainly contended in this appeal that the evidence relating to extra judicial confession made by the appellant does not inspire confidence. He further argued that the small stick seized vide Ex.P/2, used as a weapon of offence, could not have caused the death of Amso Bai. He also argued that P.W.2 Aganesu who had some grudge had falsely implicated the appellant.

9. On the other hand, Shri Bajpai, learned Govt. Advocate/Addl. Public Prosecutor and Shri Rajput, learned Panel Lawyer, have supported the judgment of learned trial Court and argued that evidence led by the prosecution brings home the guilt under Section 302 of the Indian Penal Code beyond doubt against the appellant.

10. So far as the evidence led by the prosecution relating to extra judicial confession made by the appellant is concerned, it has to be tested on the touchstone of two questions, firstly whether the confession was made voluntarily or was obtained by

coercion, inducement or promise of favour and secondly whether the evidence relating to extra judicial confession is reliable.

11. In the case of ***Gura Singh vs. State of Rajasthan*** reported in ***(2001) 2 SCC 205*** the Apex Court held as under :

> *"Extrajudicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. , Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That the evidence in the form of extrajudicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. It is not open to the court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession."*

12. The testimony of P.W.2 Aganesu, the son of the appellant, clearly shows that it was the accused/appellant who came to his house and informed that he had killed Amso Bai by a lathi whereupon he went to the house of the accused/appellant and saw the dead body of his mother inside the house of the appellant. This circumstance that the dead body of Amso Bai was found lying inside the house of the accused/appellant is also a strong

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circumstance which in the absence of any explanation whatsoever goes against the accused/appellant. True, that P.W.2 Aganesu, in para 4 of his cross-examination has admitted that he lives separately from his father, since both of them did not go alongwell but this is no ground to reject the otherwise reliable testimony of this witness as he would not like to falsely implicate his father for causing the death of his mother Amso Bai. Besides, the testimony of P.W.2 Aganesu finds corroboration from the testimony of P.W.1 Kumar Das and P.W.3 Mansingh, which shows that when they reached the house of the accused/appellant with P.W.2 Aganesu, the accused/appellant had told them that he had killed his wife Amso Bai by a lathi since she used to consume liquor alone and would not give to him.

13. We have gone through the testimony of P.W.1 Kumar Das, P.W.2 Aganesu and P.W.3 Mansingh and are satisfied that the evidence of extra judicial confession made by the accused/ appellant was voluntary, trustworthy and was rightly relied on by the learned trial Judge.

14. In the examination of the accused/appellant under Section 313 of the Code of Criminal Procedure, the accused has also not given any explanation whatsoever as to how Amso Bai, who was living with him had sustained number of injuries inside the house.

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15. So far as the contention of Shri Shrivastava, learned counsel for the appellant, that the weapon of offence seized was a small stick and could not have caused the death of Amso Bai is concerned, we find that Dr. Verma, P.W.13 in his testimony has nowhere given a positive opinion about this in cross-examination. The injuries sustained by the deceased Amso Bai as mentioned in the post mortem report Ex.P/14 clearly go to show that the deceased had sustained as many as ten injuries over her person, four out of which were on the skull, one on the upper part of right ear, another on right cheek along with a contusion over an area of 6" over the right chest with fracture of 5th, 6th, 7th and 8th rib over the mid clavicular line with huge blood present over the right thoracic cavity. Along with this, there was another contusion on the left chest over an area of 4". These injuries clearly go to show that the deceased was repeatedly struck with the lathi on vital parts resulting in instantaneous death. The injuries sustained by Amso Bao, leave no manner of doubt that death was not only homicidal, but the appellant had intended to cause the death of Amso Bai.

16. After having carefully considered the evidence led by the prosecution, we have no hesitation in holding that the guilt under Section 302 of the Indian Penal Code has been clearly brought home by the prosecution beyond the shadow of reasonable doubt against the accused/appellant.

17. In the result, we find no substance in this appeal, which is accordingly dismissed.

18. Before parting, we record our appreciation for the assistance rendered by learned counsel for the parties.

Sd/-
Fakhruddin
Judge
26-7-2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
26-7-2005

Gowri*